

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO**

DLJ MORTGAGE CAPITAL INC.

Plaintiff

vs.

MICHELLE MARIE SANTIAGO BURGOS

Defendant

CIVIL:

**RE: COLLECTION OF MONIES,
FORECLOSURE OF MORTGAGE**

COMPLAINT

TO THE HONORABLE COURT:

COMES now, DLJ Mortgage Capital Inc., hereinafter referred to as DLJ, by the undersigned attorney, and very respectfully states, alleges and prays:

1. **MICHELLE MARIE SANTIAGO BURGOS**, hereinafter referred to as the “defendant”.
2. This Honorable Court has jurisdiction over the instant case pursuant to the provisions of 28 U.S.C.A. § 1332 that provides that the district courts shall have original jurisdiction of all civil actions where the matter in controversy exceeds the sum or value of \$75,000.00, exclusive of interest and costs, and is between citizens of different states.
3. In the referenced case, it is allege the Defendant owes the Plaintiff, DLJ, the principal sum of **\$106, 926.56**, plus accrued interests at an annual rate of 5.75% since January 1, 2015 to the present, plus a stipulated fee equivalent to 10% of the original loan amount for fees, costs and attorney’s fees and a late charge fee equivalent to 3% of the overdue payment of principal and interest due for more than fifteen (15) days from its due date.

4. DLJ's postal and physical address is 11 Madison Avenue, 4th Floor, New York, NY 10010-3629 and its telephone number is (212)325-0180. Select Portfolio Servicing, Inc., is the servicing agent of DLJ. Their postal and physical address is 3815 South West Temple, Salt Lake City, UT 84115 and its telephone numbers are (800) 773-1595 and (888) 818-6032.
5. The last known address of the Defendant is: PHYSICAL: D-3 8 Street, Ext. Estancias del Mayoral, Villalba, PR 00766; and POSTAL: HC 2, Box 4391, Villalba, PR 00766-9747.
6. On May 30, 2008, for value received, a mortgage note payable to Popular Mortgage Inc. or to the order was executed by the Defendant, before Notary Public Alys Margarita Collazo Bougeois, affidavit number 6091, hereinafter "**the note**". The note in the principal sum of **\$95,000.00** bears interest on the unpaid principal balance at the rate of 6¾% per annum until the debt is paid in full, plus a stipulated fee equivalent to 10% of the original loan amount for fees, costs, and attorney's fees and a late charge fee of 3% of the overdue payment of principal and interest due for more than fifteen (15) days from its due date.
7. The principal and interests due under the note are payable in monthly installments beginning the first of each month since July 1, 2008.
8. The note provides for the payment of late charges in the amount of 3.0% of each and any monthly installment not received by the note holder within 15 days after the installment is due and for the payment of 10% of the original principal amount (\$9,500.00) to cover costs, expenses, and attorney's fees in the event the holder of the Note is required to seek judicial collection.
9. On May 30, 2008, a voluntary mortgage was also constituted and executed by Defendant according to Deed number 268 before the notary public Alys Margarita

Collazo Bougeois in Ponce, Puerto Rico, hereinafter “the mortgage deed”. This deed was to secure the holder of the note the repayment of (a) the indebtedness evidenced by the note which includes principal balance and applicable interests, (b) an amount of 10% of the original principal amount (\$9,500.00) of the note to cover costs, expenses and attorney’s fees in the event of judicial collection, (c) an amount of 10% of the original principal amount (\$9, 500.00) of the note to cover any advances made under the mortgage deed and, (d) an amount of 10% of the original principal amount of the note (\$ 9,500.00) to cover interests in addition to those secured by law.

10. The mortgage encumbers the below described property, **hereinafter “the property”**.

---**URBANA**: Solar radicado en los Barrios Hato Puerco y Vacas del término municipal de Villalba, lote número TRES (3), Bloque D del plano de inscripción de la **URBANIZACION EXTENSION ESTANCIAS DEL MAYORAL**, con una cabida superficial de **CUATROCIENTOS CINCUENTA Y NUVE PUNTO TREINTA Y CUATRO (459.34) METROS CUADRADOS**. Son sus linderos por el **NORTE**, con lote número dos (2), en una distancia de treinta y seis punto setenta y dos (36.72) metros; por el **SUR**, con lote número cuatro (4), en treinta y tres punto noventa y nueve (33.99) metros; por el **ESTE**, con franja verde, en una distancia de trece punto veinte y ocho (13.28) metros; y por el **OESTE**, con calle número ocho (8), en una distancia de trece (13.00) metros.

11. The property is identified with the number 7760 and is recorded at page number 129 of volume number 159 of Villalba, in the Registry of Property of Ponce, Section I.
12. In accordance with the Registry of Property the defendant is the owner of the property, pursuant to Deed of Purchase #267 executed before Notary Public Alys M. Collazo Bougeois.
13. The mortgage is recorded at page 130 of volume 159 of Ponce, fourth inscription in the Property Registry of Ponce, Section I.
14. On July 17, 2012 the note and the mortgage deed were modified pursuant to Deed of Modification #72, executed before Notary Public Alfredo R. Velez Lopez in Mayaguez,

Puerto Rico. The loan modification was made to :

- (a) Increase the original principal balance to \$108,651.98;
- (b) Modify the annual interest rate and the monthly payments for principal and interest starting September 1, 2012 as follows:

<u>Payments</u>	<u>Annual interest rate</u>	<u>Monthly payment</u>
1-60	5.75%	\$ 578.99
61-420	6.75%	\$ 650.04

- (c) Modify the maturity date to August 1, 2052.
 - (d) Modify the appraisal of the property and the minimum bidding in case of judicial sale to \$ 108,651.98
15. The deed of modification is recorded at page 130 of volume 159 of Villalba, fifth inscription in the Property Registry of Ponce, Section I.
 16. DLJ is the holder in due course of the note having acquired it for value received in the ordinary course of business and SPS is the servicer for DLJ.
 17. DLJ is the holder in due course of the note having acquired it for value received in the ordinary course of business and Select Portfolio Servicing is the servicer for DLJ.
 18. It was expressly stipulated in the note and in the mortgage deed that default in the payment of the monthly installments or noncompliance with the covenants or agreements included in the note and/or the mortgage deed would authorize the holder of the note to declare due and payable the total amount of the indebtedness evidenced by the note, and proceed with the execution and/or foreclosure of the mortgage.
 19. The last payment made by the defendants under the mortgage note was the payment due December 1, 2014. The defendant herein has failed to comply with the terms of the note and the mortgage deed and have breached their duty to pay the monthly

installments due since January 1, 2015 and thereafter until the present day.

20. DLJ has tried to collect the indebtedness evidenced by the mortgage note without avail, thus the entire principal sum and accrued interests and expenses have become due and payable pursuant to the acceleration clause of the note and the mortgage deed.

21. After declaring all the indebtedness of the defendant due and payable, the defendant owes DLJ the principal sum of **\$106,926.56** plus interest at a rate of 5.75% per annum since January 1, 2015. Such interests continue to accrue until the debt is paid in full. The defendant also owes DLJ late charges in the amount of 3.000% of each and any monthly installment not received by the note holder within 15 days after the installment was due. Such late charges continue to accrue until the debt is paid in full. The defendant also owes DLJ all advances made under the mortgage note including but not limited to insurance premiums, taxes and inspections as well as 10% of the original principal amount (\$9,500.00) to cover costs, expenses, and attorney's fees guaranteed under the mortgage obligation.

22. Plaintiff will present at the Registry of Property of Ponce, Section I, a notice of "lis pendens" over the property that is subject of the instant action.

WHEREFORE, in view of the above Plaintiff hereby respectfully requests that the remedy herein sought be granted and demands the entry of judgment as follows:

- a. That Defendant pays DLJ the amounts claimed in paragraph #21 of this complaint;
- b. Or in default thereof that an Order and a Writ of Execution be issued so as to allow for all legal rights, title and interests which the Defendant may have in the above described property and any building or improvement thereon be sold at a public auction and that the monies due to DLJ as alleged in the preceding paragraphs be paid out of the proceeds of the judicial sale;

- c. That the Defendant be absolutely barred and foreclosed from all rights and equity redemption in and to said property;
- d. That if the proceeds of the judicial sale are insufficient to cover the amounts specified under paragraph (a) of this prayer, the Defendant be adjudged to pay DLJ the total amount of money remaining unsatisfied and execution be issued forthwith against the Defendant for the payment of the deficiencies against any of the properties of said Defendant;
- e. That if the proceeds of the judicial sale exceed the sum of money to be paid to DLJ as aforesaid, any such excess be deposited with the Clerk of this Court subject to further orders from the Court;
- f. That once the property is auctioned and sold, the Clerk of this Court issue a writ addressed to the Registry of the Property ordering the cancellation of any junior liens recorded therein;
- g. Order such further relief as in accordance with the law and equity may be just and proper.

RESPECTFULLY SUBMITTED

At San Juan, Puerto Rico, this day 5th of February 2016.

GARCIA-CHAMORRO LAW GROUP, P.S.C.

1606 Ave. Ponce de León

Edif. Julio Bogoricín Ste. 900

San Juan, Puerto Rico 00909

Tel. 787.977.1932

Fax. 787.722.1932

juandgarcia@garciachamorro.com

s/ Juan D. García Chamorro

JUAN D. GARCÍA CHAMORRO-212,503